that the defendant was not charged with the receipt or safe-keeping of the fees, but was rather expressly forbidden by the constitution to receive them, and therefore was not within the description of the statute. Sullivan, J., dissenting, contended that as in a civil action by the State the defendant would be estopped to deny that the money belonged to the State, he would be estopped in like manner in a criminal action.

It is difficult to see how, in a civil action by the State to recover the money, there could be any application of the doctrine of estoppel. In collecting the fees the auditor was not the State's agent; he only assumed to act as such. At the time of the conversion, then, the money was not the property of the State, and the latter could lay claim to it only by ratifying the collection by the defendant. The civil action itself could be said to be such ratification, and the defendant could not then deny, or, to speak very loosely, would be estopped to deny, that the money belonged to the State. But this is a principle of ratification; there is no ground for estoppel in any true sense of the word. How can the defendant be said to have made a representation to the State which the State acted upon? And so in the present criminal action; there was no embezzlement of the State's funds, because at the time of the conversion the money was not the property of the State. It might become the property of the State by ratification, but the conversion could not be made a crime by the ratification. To resort to any doctrine of estoppel whose essential elements seem to be absent would overturn all sound principles of statutory construction, and introduce a fiction dangerous to the criminal law.

LIBEL PER SE. — What manner of publication will constitute an injury without more damage is always a difficult question for the court. The general rules are clear and unquestioned, but their application to the particular case must depend upon personal opinion and judicial policy. For this reason the decisions are often open to public criticism. A late instance is the case of *Gates* v. *N. Y. Recorder Co.* (New York Law Journal, March 10, 1898), in the present term of the New York Court of Appeals. The defendant company falsely published of the plaintiff, who had been lately married to a General Gates, "The General's bride is a dashing blonde, said to have been a concert-hall singer and dancer at Coney Island." In the argument great stress was laid upon the notoriously disreputable character of the concert halls at Coney Island. The court held the publication libellous *per se*. Mr. Justice O'Brien and the Chief Justice dissented.

The right to reputation is not simple, but highly complex and technical. The action based upon this right, developed in the ecclesiastical courts, took the form at common law of an action on the case, which requires an allegation of damage. Certain publications are, as the books say, a general damage by presumption of law; in modern ideas, this means that the imputations are *per se* an injury without damage. In slander, words which impute to the plaintiff the commission of a crime, a loathsome disease, or which disparage him in his office, trade, or profession, are by early judicial legislation actionable *per se*. The liability in libel is broader; vilification, or whatever reasonably brings a man into hatred, ridicule, or contempt, is libellous *per se*. For false publications not defamatory *per se* an action on the case always lies if damage is shown.

The question in the principal case is a nice one; but it seems that the dissent is the better law. Does the charge "former variety actress" necessarily bring the plaintiff into hatred, ridicule, or contempt? Is damage so conclusively a result that the court can say as a matter of law that the imputation is of itself an injury? It is difficult to reconcile the holding of the majority with *Hemmens* v. *Nelson*, 138 N. Y. 518, where the publication "she entertained gentlemen company at all hours of the night" was held not actionable *per se*. The New York court might well have said in the present case that special damage was necessary, for the step taken in holding this charge libellous *per se* is one that a court can ill afford to take. It may tend to open the way to the frivolous libel suits to-day so serious a problem in England. The court cannot take notice of the various and ever-changing codes by which social position is gained and lost. The action is a protection of character, not of conceit.

CURIOSITIES OF REPORTING. — These citations, received from a Boston lawyer, show the prevailing errors, and the need of reform, in our present reporting system: —

"The following head-note appears in *Stone* v. *United States*, 167 U. S. 178: —

"'The ruling of the court about the challenges are without merit.'

"From an examination of the case we infer that the reporter meant to say: 'The *objection* to the ruling of the court about challenges *is* without merit.' But when these verbal infelicities are corrected, the head-note still fails to show what the ruling was, except that it was 'about challenges.' The mystery is intensified when we find the note repeated in the index under the title 'Evidence.'

"The following head-note has a fine Hibernian flavor: —

"'A consignee of goods sent C. O. D. cannot maintain replevin against the carrier before payment and *delivery*.' *Lane* v. *Chadwick*, 146 Mass. 68.

"The implication is that if a man would bring replevin he must first get possession of his goods."

GREAT AMERICAN JUDGES. — UNITED STATES SUPREME COURT. — John Marshall was a tall, gaunt man with black hair, whose piercing black eyes seemed almost at variance with the expression of his face, brimful of simple and trusting kindness which touched the hearts even of political enemies. Chief Justice Marshall is believed by many to have been the greatest man who has sat upon the bench of the Supreme Court of the United States; but his greatness as a judge would hardly have been suspected by one who could have seen him, an old man among young men, throwing quoits at his home in Virginia. Harriet Martineau compared his disposition to that of "Uncle Toby." By nature modest, retiring, and a little uncouth, his bearing on the bench had nevertheless a certain indefinable dignity. His speech was simple, halting at first and measured, but gaining vigor as the argument progressed, enforcing conviction upon his hearers by the keenness of his logic, which cut aside irrelevant matters and lay open in its true bearings the single point at issue. His opinions were terse and cogent, written in a vehement style well chosen to present